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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

JAMES BRADY, SARAH CAVANAGH, and
IVA CHIU, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

DELOITTE & TOUCHE LLP, a limited liability
partnership; and DOES 1-10, inclusive,

Defendants.

Case No. C-08-00177-SI

**REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF DEFENDANT'S
OPPOSITION TO PLAINTIFFS'
MOTION FOR CLASS
CERTIFICATION**

Date: February 19, 2010
Time: 9:00 a.m.
Dept.: 10
Judge: The Hon. Susan Illston

Complaint filed: February 8, 2008
Trial Date: None Set

REQUEST FOR JUDICIAL NOTICE

Pursuant to Federal Rule of Evidence 201(c) and (d), Defendant Deloitte & Touche LLP, hereby requests that the Court take judicial notice of the following documents, true and correct copies of which are attached hereto:

Exhibit 1: Certificate to Attest Experience - Public Accounting (Form 11A-6A), published by the California Board of Accountancy

Exhibit 2: CPA Licensing Applicant Handbook, published by the California Board of Accountancy

Exhibit 3: Uniform CPA Examination Handbook, First-time Applicants, published by the California Board of Accountancy

Exhibit 4: Slip Opinion in *Wirth v. Grant Thornton, LLP*, No. 09-00832 RGK (C. D. Cal. July 29, 2009) (order denying class certification)

Exhibit 5: Slip Opinion in *Mekhitarian v. Deloitte & Touche, LLP*, No. 07-412 (C. D. Cal. Nov. 3, 2009) (order denying class certification)

Exhibit 6: Amicus Curiae Brief of American Institute of Certified Public Accountants in support of Appellant For Reversal, filed in *Campbell v. Pricewaterhousecoopers*, Docket No. 09-16370 (9th Cir., filed Nov. 9, 2009)

Exhibit 7: Excerpts from the 2002 Update of the DLSE Enforcement Policies and Interpretations Manual (Revised), published by the California Department of Labor Standards Enforcement

Exhibit 8: AICPA Professional Standards, AU Section 311, published by American Institute of Certified Public Accountants, Inc.

Exhibit 9: Relevant Portions of former C.F.R. (29 C.F.R. §§ 541.202, 541.205, 541.207)

Exhibit 10: Opinion in *Porush v. Anshen & Allen Architects*, California Labor Commissioner Case No. 06-74759

ARGUMENT

Federal Rule of Evidence 201 authorizes judicial notice of facts “capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” Fed. R.

1 Evid. 201(b)(2). The above-referenced exhibits, attached hereto, satisfy this requirement.
 2 Accordingly, judicial notice is mandatory “if requested by a party and [the court is] supplied with the
 3 necessary information.” Fed. R. Evid. 201(d).

4 ***Accounting Documents.***

5 Exhibits 1, 2, 3, and 8 are documents published, and made publicly available, by the
 6 California Board of Accountancy and the American Institute of Certified Public Accountants, Inc.,
 7 describing accounting standards and the CPA examination requirements. Courts routinely take
 8 judicial notice of documents such as these that set forth accounting rules and standards, because they
 9 contain facts that “are capable of accurate and ready determination by resort to resources whose
 10 accuracy cannot be reasonably questioned.” *See In re Network Assocs. Sec. Litig.*, 2003 U.S. Dist.
 11 LEXIS 14442, *3 (N.D. Cal. Mar. 25, 2003) (citing Fed. R. Evid. 201(b) and stating that “judicial
 12 notice is appropriate for SEC filings, press releases, and accounting rules”); *In re Asyst. Techs., Inc.*
 13 *Derivative Litig.*, No. C-06-04669 EDL, 2008 U.S. Dist. LEXIS 41173 (N.D. Cal. May 23, 2008)
 14 (same). Further, records of a state agency such as the California Board of Accountancy are “not
 15 subject to reasonable dispute” are properly the subject of judicial notice. *City of Sausalito v. O’Neill*,
 16 386 F.3d 1186, 1224 n.2 (9th Cir. 2004). For these reasons, the Court should take judicial notice of
 17 these documents.

18 ***Court Records In Other Cases.***

19 Exhibits 4, 5, 6, and 10 are two slip opinions from the Central District of California, an
 20 amicus brief filed in the Ninth Circuit Court of Appeal, and an Order, Decision or Award of the
 21 California Labor Commissioner. Courts may take judicial notice of documents contained in their
 22 own file, as well as documents filed in other courts and tribunals. *Biggs v. Terhune*, 334 F.3d 910,
 23 916 n.3 (9th Cir. 2003) (“[m]aterial from a proceeding in another tribunal are appropriate for judicial
 24 notice”). Accordingly, the Court should also take judicial notice of these documents.

25 ***DLSE Manual and former Code of Federal Regulations.***

26 Exhibit 7 contains excerpts from the California Department of Labor Standards Enforcement
 27 Manual, and Exhibit 9 contains relevant portions of the former Code of Federal Regulations. Both
 28 documents are publicly available, and “not subject to reasonable dispute.” Indeed, as noted above,

1 records of a state agency that are “not subject to reasonable dispute” should be judicially noticed.
2 *City of Sausalito*, 386 F.3d at 1224 n.2. The Court should take judicial notice of the attached excerpts
3 of the DLSE Manual and the former Code of Federal Regulations.

4 **CONCLUSION**

5 For the foregoing reasons, Deloitte’s Request for Judicial Notice should be granted.

6 Dated: December 23, 2009

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